

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 003**

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF MINES AND MINERALS

COMPLAINANT

Vs.

CLIFFORD MORGAN, CARSON SIZEMORE,
CARSON SIZEMORE & DONAVAN ASHER

RESPONDENTS

FINAL ORDER REGARDING CARSON SIZEMORE

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Carson Sizemore, and the members of the Commission having reviewed the Settlement Agreement filed on April 14, 2004 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Carson Sizemore's Underground Miner's Certificate, # A – 177 – 01 , issued by the Commonwealth of Kentucky, shall be **PROBATED**, for a period of six (6) months, effective upon the signing of the settlement agreement of record herein;
3. During said probationary period, if Respondent Carson Sizemore willfully violates any Commonwealth of Kentucky or Federal mine safety laws or regulations, the KDMM may file a motion with the Mine Safety Review Commission to revoke Carson Sizemore's Underground Miner's

Certificate, # A – 177 – 01 , issued by the Commonwealth of Kentucky, for the remainder of the six (6) moth probationary period. Carson Sizemore retains his right to a hearing;

4. Respondent Carson Sizemore shall be required to take eight (8) hours of **safety training**, to be provided by KDMM, pursuant to the terms of the Settlement Agreement, within thirty (30) days of the effective date of the Settlement Agreement;
5. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference as if reproduced herein in full as a material part of this FINAL ORDER. A copy is attached hereto;
6. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by KDMM for the acts or omissions during that probationary period. This Final Order in no way prohibits KDMM from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
7. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Carson Sizemore, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);

8. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Carson Sizemore, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
9. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 12TH day of April, 2004.



JOHN DAVID PRESTON, CHAIR
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING Carson Sizemore was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 17TH day of Aug. 2004:

Respondent
Carson Sizemore
P.O. Box 151
Bear Branch KY 41714

And by regular mail postage prepaid to Respondents:

William D. Kirkland, Esq.
Karen Chrisman, Esq.
Mcbrayer, McGinnis, Leslie & Kirkland
P.O. Box 1100
Frankfort, Ky 40602 - 1100
Counsel for Clifford Morgan

James D. Burton
442 Hurricane Creek Road
Hyden, KY 41749

Donavan Archer
P.O. Box 1700
Asher KY 40803

And by messenger mail to:

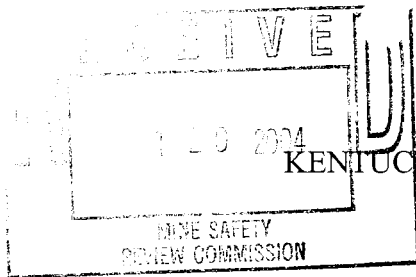
Paris Charles, Director
Office of Mine Safety and Licensing
1025 Capital Center Drive
Frankfort Ky 40601

Hon. Tony Oppeward
Office of Mine Safety and Licensing
General Counsel
1025 Capital Center Drive
Frankfort Ky 40601

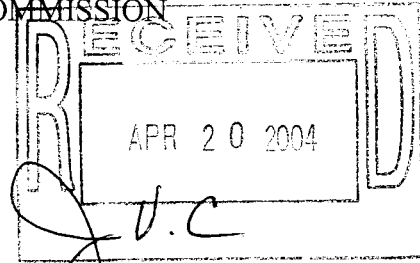
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601


Hon. Bryon Alan Thompson



KENTUCKY MINE SAFETY REVIEW COMMISSION



KENTUCKY DEPT. OF MINES & MINERALS)

Complainant)

v.)

Administrative Action No. 04-MSRC-003

CLIFFORD MORGAN, JAMES D. BURTON,)

CARSON SIZEMORE & DONAVAN ASHER)

Respondents)

SETTLEMENT AGREEMENT BETWEEN KDMM & CARSON SIZEMORE

Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”; “the Department”),¹ and Respondent Carson Sizemore (“Sizemore”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the settlement of this action against him² and the cancellation of the trial - as it pertains to him - that is currently scheduled for June 10, 2004, Sizemore hereby admits the existence of the conditions set forth in paragraphs 9(a) - 9(h) of KDMM’s Complaint

¹ On January 6, 2004, pursuant to Executive Order 2004 -031 (“Relating to the Reorganization of the Environmental and Public Protection Cabinet”), the Department of Mines & Minerals was “abolished” and re-established as the “Division of Mines & Minerals” within the Department for Natural Resources. This reorganization plan is pending before the General Assembly. The undersigned counsel has been instructed to continue using the pre-Executive Order designation of the agency (“Department of Mines & Minerals”) until further notice.

² KDMM and Sizemore will file a joint motion with the Mine Safety Review Commission to approve the Settlement Agreement and dismiss this action. Said approval is at the discretion of the Commission.

and agrees to the **PROBATION OF HIS UNDERGROUND MINE FOREMAN'S CERTIFICATE (# A-177-01) FOR A PERIOD OF SIX (6) MONTHS**, effective upon the signing of this Settlement Agreement by both parties. In addition, Sizemore agrees to take **EIGHT (8) HOURS OF SAFETY TRAINING - PROVIDED BY EITHER KDMM'S HAZARD OR BARBOURVILLE DISTRICT OFFICES - WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS SETTLEMENT AGREEMENT.**³

During his six (6) month period of probation, Sizemore agrees to comply with all state and federal mine safety and health laws and regulations. The willful violation by Sizemore of any of said laws or regulations may result in the Department filing a motion with the Mine Safety Review Commission ("the Commission"; "MSRC") to revoke Sizemore's underground mine foreman's certificate for the remainder of the probationary period.⁴ In that case, Sizemore would be entitled to a hearing before the Commission on the allegations against him.

Sizemore further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

Sizemore understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Sizemore further states

³ Said safety training is in addition to any annual refresher training or other safety training that Sizemore is legally required to take.

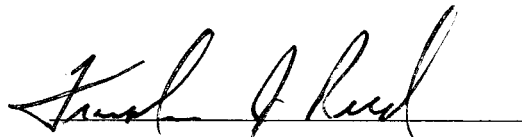
⁴ If the circumstances warranted, KDMM would also retain the right to file a separate action with the Commission seeking other penalties against the Respondent for his actions.

that he has carefully read and considered this Settlement Agreement prior to signing the Agreement.

KDMM and Sizemore acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.



CARSON SIZEMORE
P.O. Box 151
Bear Branch, Kentucky 41714



FRANKLIN J. REED
Acting Agency Head
Kentucky Dept. of Mines & Minerals
P.O. Box 2244
Frankfort, Kentucky 40602

4-14-04

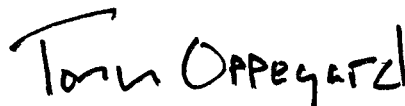
DATE

4-12-04

DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between KDMM & Carson Sizemore was mailed this 20TH day of April, 2004, to: Clifford Morgan, P.O. Box 47, Wendover, Kentucky 41775; James D. Burton, 442 Hurricane Creek Road, Hyden, Kentucky 41749; Carson Sizemore, P.O. Box 151, Bear Branch, Kentucky 41714; and Donavan Asher, P.O. Box 1700, Asher, Kentucky 40803.



TONY OPPEGARD
General Counsel
KENTUCKY DEPT. OF MINES & MINERALS